
OLR Bill Analysis

sSB 280 (File 111, as amended by Senate “A” and “I”)*

AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

SUMMARY:

This bill:

1. eliminates the death penalty as a sentencing option for a capital felony committed on or after the bill’s effective date, thus leaving life imprisonment without the possibility of release as the penalty;
2. renames the crime of capital felony as “murder with special circumstances”;
3. makes a number of changes to apply the rules for capital felony crimes to murder with special circumstances, as necessary; and
4. specifies that it does not affect capital felony convictions or cases pending before the bill’s effective date.

The bill also requires the Department of Correction (DOC) to confer special circumstances high security status on any inmate (1) convicted of murder with special circumstances committed on or after the date the bill takes effect or (2) whose death sentence is commuted by the Board of Pardons and Paroles, or reduced by a court, to life without the possibility of release.

These inmates must be placed in administrative segregation (AS) until DOC completes the reclassification process required by the bill. After reclassification, the inmate can remain in AS, be placed in protective custody, or be placed in a housing unit for the maximum security population under specified confinement conditions. DOC must annually review the confinement conditions of someone placed in a housing unit for the maximum security population.

*Senate Amendment "A" adds the provisions on special circumstances high security status, reclassification, and conditions of confinement.

*Senate Amendment "I" adds a provision on the application of two statutory provisions on the effect of the repeal of an act or statute.

EFFECTIVE DATE: Upon passage, and the provision renaming the crime of capital felony as murder with special circumstances applies to crimes committed on and after that date.

CRIME OF CAPITAL FELONY AND MURDER WITH SPECIAL CIRCUMSTANCES

The bill renames the crime of capital felony as "murder with special circumstances." A person commits the crime of capital felony under current law, or murder with special circumstances under the bill, if he or she murders:

1. while the victim was acting within the scope of his or her duties, a police officer, Division of Criminal Justice inspector, state marshal, judicial marshal, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the energy and environmental protection commissioner, firefighter, or DOC employee or service provider acting within a correctional facility when the perpetrator is an inmate;
2. for pay, or hires someone to murder;
3. after a previous conviction for intentional murder or murder while a felony was committed;
4. while sentenced to life imprisonment;
5. someone that he or she kidnapped;
6. while committing 1st degree sexual assault;
7. two or more people at the same time or in the course of a single

transaction; or

8. a person under age 16.

Bail

Under the Connecticut Constitution, a person is eligible for bail unless he or she is charged with a capital offense “where the proof is evident or the presumption great.” Because murder with special circumstances is not a capital offense, people charged with this crime would be eligible for bail under the constitution. The bill allows the court, a judge, or a judge trial referee issuing a bench warrant to arrest someone for murder with special circumstances to indicate that the person should not be released on bail.

As with capital felonies under current law, people convicted of murder with special circumstances are ineligible for post-conviction bail while awaiting sentencing or appealing their conviction.

Rules on Prosecution and Release

The bill makes a number of technical and conforming changes to apply the laws applicable to capital felony crimes to murder with special circumstances as necessary, such as:

1. requiring the preservation of biological evidence and records of evidence and judicial proceedings,
2. authorizing the court to allow the reading of a victim impact statement in court before imposing the sentence,
3. allowing defendants accused of the crime to choose to have the case tried to a jury or three-judge panel,
4. allowing them to challenge potential jurors during voir dire,
5. requiring testimony of at least two witnesses or their equivalent for a conviction, and
6. prohibiting medical or compassionate parole release.

Effect of Repeal of an Act or Statute

Under existing law, the repeal of:

1. an act does not affect any (a) punishment, penalty, or forfeiture incurred before the repeal takes effect or (b) suit, prosecution, or proceeding pending at the time of repeal, for an offense committed or recovery of a penalty of forfeiture incurred under the repealed act (CGS § 1-1(t)) and
2. a statute defining or prescribing the punishment for a crime does not affect pending prosecutions or existing liability to prosecution and punishment, unless the repealing statute expressly provides that it has that effect (CGS § 54-194).

The bill specifies that these provisions must apply and be given full force and effect regarding capital felonies committed before the bill's effective date.

CLASSIFICATION AND CONDITIONS OF CONFINEMENT

The bill requires DOC to place on special circumstances high security status any inmate:

1. convicted of murder with special circumstances committed on or after the bill takes effect or
2. whose death sentence is commuted by the Board of Pardons and Paroles, or reduced by a court, to life without the possibility of release.

These inmates must be placed in AS (see BACKGROUND) until a reclassification process is completed.

The bill requires the DOC commissioner to establish the reclassification process, which must include assessing (1) the inmate's risk to staff and other inmates and (2) whether the risk requires placing the inmate in AS or protective custody. If placed in AS, the inmate must complete the AS program (see BACKGROUND).

Under the bill, after completing reclassification, the commissioner

must determine if the inmate should remain in AS or be placed in protective custody or a housing unit for the maximum security population. If placed in the maximum security population, the bill requires the inmate to:

1. remain on special circumstances high security status,
2. be housed separately from inmates who do not have this status,
3. have his or her movements escorted or monitored,
4. move to a new cell at least every 90 days,
5. have his or her cell searched at least twice each week,
6. be prohibited from having contact during the inmate's social visits,
7. have work assignments within the assigned housing unit, and
8. be limited to no more than two hours of recreation per day.

The bill requires an annual review of an inmate's confinement conditions if he or she is placed in a housing unit for the maximum security population. The commissioner may, for compelling correctional management or safety reasons, change any conditions not specified above.

The bill requires DOC to annually report to the legislature, beginning January 2, 2013, on the number of inmates classified with special circumstances high security status on December 1 of the year before the report is due, their location, and the specific conditions of confinement imposed on each such inmate.

BACKGROUND

Death Penalty Sentencing Hearing

A person convicted of a capital felony must be sentenced to either the death penalty or life imprisonment without the possibility of release. The jury, or the court if the defendant chooses, weighs

mitigating and aggravating factors in a separate sentencing hearing to decide whether to impose the death penalty. The jury or court cannot impose the death penalty, and must sentence the person to life imprisonment without the possibility of release, if mitigating factors outweigh, or are of equal weight to, the aggravating factors, or if any of five automatic bars to the death penalty exist. Otherwise, the person must be sentenced to death.

Aggravating Factors. By law, the only aggravating factors that the jury or court can consider are that the defendant:

1. committed the offense while committing or attempting to commit a felony, or while fleeing from the commission of or attempt to commit a felony, and had previously been convicted of the same felony;
2. had been convicted of at least two state or federal offenses prior to the offense, each of which was committed on different occasions, involved serious bodily injury, and had a maximum penalty of at least one year imprisonment;
3. committed the offense knowingly creating a risk of death to another person in addition to the victim of the offense;
4. committed the offense in an especially heinous, cruel, or depraved manner;
5. procured someone else to commit the offense by paying or promising to pay anything of pecuniary value;
6. committed the offense in return for payment or the expectation of payment;
7. committed the offense with an assault weapon; or
8. murdered one of the following people, while the victim was acting within the scope of duty, in order to (a) avoid arrest for or prevent detection of a criminal act, (b) hamper or prevent the victim from carrying out an act within the scope of official

duties, or (c) retaliate against the victim for performing official duties: a police officer, Division of Criminal Justice inspector, state marshal, judicial marshal, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the energy and environmental protection commissioner, firefighter, or DOC employee or service provider acting within a correctional facility when the perpetrator is an inmate.

Mitigating Factors. The jury or court must determine if a particular factor concerning the defendant's character, background, or history, or the nature and circumstances of the crime, is established by the evidence and whether that factor is mitigating, considering all the facts and circumstances of the case. Mitigating factors are not defenses or excuses for the capital felony for which the defendant was convicted, but are factors that, in fairness and mercy, tend either to extenuate or reduce the defendant's blame for the offense or otherwise provide a reason for a sentence less than death.

Bars to the Death Penalty

By law, five factors automatically bar the death penalty. A defendant cannot receive the death penalty if the court or jury determines that he or she:

1. was under age 18 at the time of the crime;
2. was mentally retarded at the time of the crime;
3. had a mental capacity or ability to conform his or her conduct to the requirements of law that was significantly impaired at the time of the crime (but not so impaired as to constitute a defense);
4. was guilty of a capital felony only as an accessory and had relatively minor participation; or
5. could not reasonably have foreseen that the conduct, in the course of committing the crime he or she was convicted of, would cause someone's death.

Administrative Segregation

Under DOC administrative directives, AS is for inmates who (1) have behaved while incarcerated in a way that poses a risk to the safety of staff or inmates, (2) have demonstrated that they cannot be placed in the general population, and (3) can no longer be safely managed in the general population. AS places an inmate in a restrictive housing unit that segregates him or her from other inmates (Administrative Directive 9.4).

The program includes a number of restrictions, some of which are lifted as the inmate progresses through the program's phases. For example, use of restraints while inmates are outside their cells is phased out until no restraints are generally authorized; the amount inmates can spend on commissary items and the number of phone calls and non-contact visits allowed per week increases; recreation is limited to one hour per day, five days per week but the use of restraints is phased out; work assignments within the unit may be allowed in the later phases; inmates take classes throughout the program but in-cell during the program's initial phase; and meals are in-cell during the program's first two phases. Throughout the program, inmates can have a radio but not a television.

DOC directives authorize AS at the following correctional institutions: Northern, Garner, MacDougall-Walker, Manson for youth inmates, and York for female inmates. Other AS transitional phases are authorized at level 4 facilities designated by the commissioner (Administrative Directive 9.4).

High Security Status

Under DOC directives, high security status involves increased supervision of inmates who pose a threat to the safety and security of the facility, staff, inmates, or the public.

These inmates are housed in a secured cell and moved to a new cell at least every 90 days. Their conditions are like general population conditions except their movements are escorted or monitored and they have more frequent cell searches, are only allowed work assignments

in their unit, can only participate in monitored programs or those within their unit, and are only allowed non-contact visits (Administrative Directive 9.4).

Protective Custody Status

Under DOC directives, it must consider protective measures for an inmate when there is a substantial risk of serious harm to the inmate, a situation occurs that would normally result in substantial risk or serious injury to an inmate, or the circumstances of the offense or media coverage require it. DOC must also consider using protective measures based on DOC employees' professional judgment or knowledge.

Inmates requiring protective custody must be kept in certain facilities. They are kept separate from general population inmates and activities and directly monitored by staff to minimize the risk to the inmate. Their living conditions must resemble those for general population inmates (Administrative Directive 9.9).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 24 Nay 19 (03/21/2012)